

Advisory Opinion No. 91-10

The Conflicts of Interest Board has been asked for its opinion concerning the extent to which elected officials and high-level public servants may, consistent with the conflicts of interest provisions in Chapter 68 of the City Charter, participate in fundraising activities on behalf of not-for-profit organizations such as community groups, educational institutions and charities.

This inquiry raises the question as to when the participation of such public servants in the fundraising activities of not-for-profit groups, some of which may have business dealings with the City, may constitute a misuse of public office in violation of Chapter 68. See Charter Section 2604(b)(2), which provides that no public servant shall engage in any transaction or have any private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. In recommending changes to former Chapter 68 that became effective in 1990, the Charter Revision Commission retained this prohibition, "[i]n recognition of the

fact that the specific prohibitions set forth in Chapter 68 cannot address all conflicts of interest situations which may arise in the future and that the [Conflicts of Interest] Board must retain the flexibility to handle new situations as they arise". \* See Report of the New York City Charter Revision Commission, December 1986-November 1988, Vol. II (1989) at 175. See also, Section 2604(c)(1) of former Chapter 68.

It is surely in the City's interest to encourage the voluntary financial support of community groups, educational institutions and charities, inasmuch as their good works help to sustain the life of the City and indeed are indispensable to it. While it is commendable for an elected official or high-level public servant to give his or her private time and/or personal financial support to such organizations, an appearance of impropriety may be created if the nature of the official's involvement is perceived to be coercive or provides an inappropriate opportunity for access to such official.

Opinion No. 688 (1989) of the Board of Ethics,

\* No penalties may be imposed for a violation of Section 2604(b)(2) unless the prohibited conduct has been identified by rule of the Board. See Charter Section 2606(d).

this Board's predecessor, addressed this issue with respect to elected officials under the former Charter provision which, as noted above, was identical to Charter Section 2604(b)(2). This opinion distinguished between an elected official's "active" role in soliciting charitable contributions, which could create the appearance of impropriety, and a "passive" role clearly insulated from the direct solicitation of funds, which would not be improper. This opinion provides in pertinent part that:

For example, it is permissible for an elected official to serve as the chair or as a member of an honorary committee for a fundraising event, or to be honored at that event, when the official's involvement is limited to attending the event and having his or her name listed on invitations or other communications concerning the event....

It is not appropriate, however, for an elected official to make telephone calls, sign letters, or otherwise become directly involved in soliciting for a charitable group.

In Opinion No. 688, the Board of Ethics cited with approval its Opinion No. 185 (1971), in which a high-level appointed public servant asked whether he could sign a letter in his official capacity soliciting funds on behalf of a religious group; the letter would be sent to many people throughout the City. The Board of Ethics advised him that the nature of his proposed

involvement with this not-for-profit group would be improper, stating:

While the purpose of many religious and charitable groups such as this one, are most laudable, we believe that such solicitation and especially the use of his city title, on behalf of organizations or from persons or companies likely to be affected by his official action would be improper. It is not the participation in the dinner which is improper, but the placing of the official in a position where his public office may be considered as a lure or as pressure by those who receive his letter.

Opinion No. 688 also relied upon Board of Ethics Opinion No. 348 (1974), which held that an agency head should not have used his official stationery on a letter soliciting recipients to buy tickets to a fundraising dinner for a charity, even though the letter was marked "personal and unofficial."

In this opinion, which supersedes Board of Ethics Opinion Nos. 185, 348 and 688, we adopt the distinction between "active" and "passive" roles in fundraising as a useful analytic tool in determining when the nature of an elected official's solicitation of contributions on behalf of a not-for-profit group could be construed as a misuse of public office. An appointed official who is identified in the public mind as a spokesperson for an elected official should also refrain from active

fundraising for such groups.

Consistent with this analysis, however, we do not consider that a City official's public office is being misused if, after contributions have been pledged or made, such official is actively involved in honoring the donors in public ceremonies, provided that his or her participation had not been held out as an inducement to contribute.

With respect to high-level appointed officials, it is our opinion that, under certain circumstances, such officials may take an active role in charitable fundraising without creating an appearance of impropriety under Chapter 68 of the Charter. Such solicitations, however, should not be directed to persons or firms likely to come before the officials' agencies or be affected by their official actions. The solicitation should be free of any implication that the officials are obtaining any direct or indirect personal benefits and should not otherwise create a perception that their City offices are being misused as "a lure or as pressure."

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Dated: November 18, 1991